

RD AN No. 4168 (1980-D)
March 29, 2006

TO: State Directors
Rural Development

ATTENTION: Rural Housing Program Directors,
Guaranteed Loan Specialists, and
Rural Development Managers

FROM: Russell T. Davis (*Signed by James C. Alsop*) for
Administrator
Housing and Community Facilities Programs

SUBJECT: Single Family Housing Guaranteed Loan Program
Acceptable Foreclosure Time Frames

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to clarify and standardize the acceptable foreclosure time frame by State for Single Family Housing Loans Guaranteed by the Single Family Housing Guaranteed Loan Program (SFHGLP).

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 4060 (1980-D) which expires on March 31, 2006.

EXPIRATION DATE:
March 31, 2007

FILING INSTRUCTIONS:
Preceding RD Instruction 1980-D

BACKGROUND:

This AN provides consistency in the treatment of loss claim interest reductions resulting from untimely foreclosure initiation or completion. RD Instruction 1980-D, section 1980.371(d) states that lenders must make a decision regarding liquidation by the time the loan is three payments past due. RD Instruction 1980-D, section 1980.374 states that the foreclosure must be initiated within 90 days of the date the decision to liquidate is made unless the foreclosure has been delayed by law or an alternative to foreclosure is recommended to resolve the delinquency. Initiation of foreclosure begins with the first public action required by law, such as filing a Complaint or Petition, recording a Notice of Default, or publication of a Notice of Sale. RD Instruction 1980-D provides no guidance as to what is considered a reasonable time frame in which to complete a foreclosure in the state where the property is located. This AN establishes State specific guidance for time frames for completing foreclosure actions initiated after the date of this notice.

The SFHGLP has adopted Freddie Mac's foreclosure time frames. These time frames are measured from the first legal action (which is in accordance with RD Instruction 1980-D) to the foreclosure sale date, which is when the six-month Real Estate Owned (REO) marketing period begins. Basic time frames of foreclosure processes most commonly utilized by private attorneys in state courts compare favorably to the Freddie Mac time frames. Additionally, Freddie Mac measures time frames in days as opposed to months, making compliance determinations and interest reduction calculations easier.

IMPLEMENTATION RESPONSIBILITIES:

The SFHGLP will use the foreclosure time frames as prescribed in Attachment 1, when determining whether a lender has exercised diligence in completing the foreclosure process. Differences in state procedures will affect the length of time required to complete foreclosure, therefore, the time frame will depend on the location of the property.

Attachment 1 also lists the recommended method of foreclosure and the first public action required by law to initiate each foreclosure method. In states where more than one foreclosure method is available but only one option is listed, the Agency chose the method that is most cost effective in reducing legal fees and accrued interest expense. The Agency does not intend to prohibit the payment of claims where the lender obtains title through a method of foreclosure other than what is recommended. However, the Agency office processing the loss claim request must determine whether the foreclosure method chosen by the lender was in the best interest of the Federal Government. For example, if the recommended foreclosure method is non-judicial, but judicial foreclosures are required to preserve the lender's right to a deficiency judgment, the lender may demonstrate that recovery on a deficiency judgment is expected after considering the time and cost of litigation. In such case, the judicial foreclosure method should be considered acceptable.

SFHGLP foreclosure time frames start with the date of the first legal action required by law, end with the foreclosure sale date, and do not include post-sale redemption periods or sale confirmations. Since redemption periods may be adjusted under some state laws based on the circumstances surrounding a property, such as the amount of unpaid principal still owed or the occupancy status of the property, reasonable time frames for redemption periods and sale confirmations should be established on a case-by case basis in accordance with State law. Reimbursement of accrued interest may be reduced in accordance with RD Instruction 1980-D, section 1980.376(b) for each day that the foreclosure continues past the prescribed time frame unless the lender presents a valid reason that justifies the delay.

Lenders and the Agency must ensure that staff members are familiar with State guidelines related to foreclosures. Exceptions to the foreclosure time frame, which cause delays beyond the lender's control must be documented and submitted with the claim package. Examples of such circumstances include bankruptcy petitions filed after foreclosure initiation, contested foreclosures, and court scheduling delays or delays in obtaining service. Supporting documentation includes attorney correspondence or copies of court records. Lenders are responsible for including documentation to support the first public action and the foreclosure sale date in the claim package provided to the Agency office responsible for processing the claim.

The lender may be authorized a 60-day extension to the allowable time frame for compliance with State law when a bankruptcy delays the completion of foreclosure. To determine the impact of a bankruptcy filing on the foreclosure time frame, the total number of days from first action to foreclosure sale will be calculated. The total number of days between the bankruptcy filing date and the date of bankruptcy release or dismissal for each applicable bankruptcy case will then be subtracted from the total number of foreclosure days. The resulting number of days will be compared to the SFHGLP foreclosure time frame plus an automatic 60-day extension to determine if time frame was met.

Example -

Property State - Georgia

SFHGLP Time Frame –80 Days

	<u>Date</u>	<u>Number of Days from Foreclosure Initiation</u>
1 st Publication Held	2/6/06	0
Bankruptcy Filed	3/1/06	23
Bankruptcy Released	9/14/06	220
Foreclosure Sale Republished	10/6/06	242
Foreclosure Sale Held	11/6/06	273

The total number of days between first publication and the foreclosure sale date is 273 days. The total number of days between bankruptcy filing and bankruptcy release was 197 days. The number of foreclosure days (273) minus the number of bankruptcy days (197) equals 76. The SFHGLP time frame for Georgia is 80 days. In this example, it is not required to add the 60-day extension to bring the time frame to 140 days. This example demonstrates that the foreclosure was pursued diligently and the delay resulted from the State requirement to republish the foreclosure sale. As a result, the lender is not penalized for not meeting the time frame.

Each Rural Development State Office is responsible for notifying State-approved lenders of the revised foreclosure time frame requirements. The National Office will advise nationally-approved lenders concurrent with the issuance of this AN.

In addition, during lender compliance reviews, files should continue to be reviewed in an effort to ensure that lenders are complying with the foreclosure requirements. Lenders that are determined to be out of compliance or that use Attorneys who are consistently out of compliance should be counseled on the provisions of the regulations and should be monitored closely for future compliance.

Questions about this AN may be directed to Susanne Wilson or Debbie Terrell of the Single Family Housing Guaranteed Loan Division, USDA, Rural Housing Service, 1400 Independence Avenue, SW, Washington, DC 20250-0784. The telephone number is (202) 720-1452. Email is susanne.wilson@wdc.usda.gov or debra.terrell@wdc.usda.gov.

Attachment

State	Days¹ from Foreclosure Initiation to Foreclosure Sale	Foreclosure Method	Initiation of Foreclosure Document
Alabama	85	Non-judicial	Publication
Alaska	140	Non-judicial	Recording of Notice of Default
Arizona	125	Non-judicial	Recording of Notice of Sale
Arkansas	130	Non-judicial	Recording of Notice of Default
California	135	Non-judicial	Recording of Notice of Default
Colorado	130	Non-judicial	Filing of Foreclosure Docs with Public Trustee
Connecticut	220	Judicial	Delivery of Complaint to Sheriff
Delaware	250	Judicial	Complaint Filed
Florida	170	Judicial	Complaint Filed
Georgia	80	Non-judicial	Publication
Guam	250	Non-judicial	Recording of Notice of Default
Hawaii	140	Non-judicial	Publication of Notice of Intent to Foreclose
Idaho	190	Non-judicial	Recording of Notice of Default
Illinois	275	Judicial	Complaint Filed
Indiana	265	Judicial	Complaint Filed
Iowa ²	315	Judicial	Complaint Filed
Kansas	180	Judicial	Petition Filed
Kentucky	265	Judicial	Complaint Filed
Louisiana	220	Judicial	Petition for Executory Process
Maine	355	Judicial	Complaint Filed
Maryland	85	Judicial	Filing an Order to Docket
Massachusetts	135	Judicial	Filing Complaint Relative to Soldier's and Sailor's Relief Act
Michigan	75	Non-judicial	Publication
Minnesota	110	Non-judicial	Publication
Mississippi	130	Non-judicial	Publication
Missouri	85	Non-judicial	Publication
Montana	205	Non-judicial	Recording of Notice of Sale
Nebraska	155	Non-judicial	Filing of Notice of Default
Nevada	155	Non-judicial	Recording of Notice of Default
New Hampshire	110	Non-judicial	Publication
New Jersey	300	Judicial	Complaint Filed
New Mexico	250	Judicial	Complaint Filed
New York	280	Judicial	Complaint Filed
North Carolina	120	Non-judicial	Notice of Hearing
North Dakota	190	Judicial	Complaint Filed
Ohio	265	Judicial	Complaint Filed
Oklahoma	250	Judicial	Petition Filed
Oregon	180	Non-judicial	Recording of Notice of Default
Pennsylvania	300	Judicial	Complaint Filed

State	Days¹ from Foreclosure Initiation to Foreclosure Sale	Foreclosure Method	Initiation of Foreclosure Document
Puerto Rico	375	Judicial	Complaint Filed
Rhode Island	85	Non-judicial	Publication
South Carolina	215	Judicial	Complaint Filed
South Dakota	205	Judicial	Complaint Filed
Tennessee	90	Non-judicial	Publication
Texas	90	Non-judicial	Posting and Filing of Notice of Sale
Utah	165	Non-judicial	Recording of Notice of Sale
Vermont	360	Judicial	Complaint Filed
Virgin Islands	325	Judicial	Complaint Filed
Virginia	60	Non-judicial	Publication
Washington	160	Non-judicial	Recording of Notice of Default
West Virginia	145	Non-judicial	Publication
Wisconsin	310	Judicial	Complaint Filed
Wyoming	100	Non-judicial	Publication

¹ State foreclosure time frames are in calendar days.

² State time frame represents the standard elapsed time for a judicial foreclosure without redemption. A longer time frame may be allowed if a borrower files a written demand to delay the sale.